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10 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
11 AT SPOKANE

12 THE TRAVELERS INDEMNITY
COMPANY,

13 Plaintiff,

14 v.

15 CITY OF RICHLAND, a Washington
16 municipal corporation; GUARANTEE
INSURANCE COMPANY,

17 Defendants.
18

No. 17-cv-5200

**COMPLAINT FOR
DECLARATORY RELIEF**

19 The Travelers Indemnity Company (“Travelers”) alleges as follows:

20 **I. NATURE OF ACTION**

21 1. This is an action under the Federal Declaratory Judgment Act, 28
22 U.S.C. § 2201, whereby Travelers seeks a declaration that certain insurance policies
23 it issued to defendant City of Richland (“City”) do not provide further defense

1 coverage, or any indemnity coverage to the City with respect to environmental
2 liability claims at the Horn Rapids Landfill.

3 **II. PARTIES**

4 2. Travelers is a Connecticut corporation authorized to do business in
5 Washington. Travelers issued a primary level comprehensive general liability
6 policy and a catastrophe umbrella policy to the City.

7 3. On information and belief, Guarantee Insurance Company is a Florida
8 corporation (“Guarantee”) authorized to do business in Washington. On
9 information and belief, Guarantee issued primary level comprehensive general
10 liability policies to the City.

11 4. The City is a municipality duly organized under the laws of the State of
12 Washington.

13 **III. JURISDICTION AND VENUE**

14 5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332
15 because there is complete diversity of citizenship between the parties and the
16 amount in controversy exceeds \$75,000.

17 6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a
18 substantial part of the events or omissions giving the City’s claim for insurance
19 coverage occurred in the Eastern District of Washington.

20 7. This Court has personal jurisdiction over the defendants under Wash.
21 Rev. Code. § 4.28.185(1)(a) due to defendants presence within the State of
22 Washington or their transaction of business within the State of Washington.

IV. FACTS

The Insurance Policies

8. Travelers issued to the City the following policies (“Travelers Policies”) of insurance under which the City has sought defense and indemnity coverage for the Underlying Matter (as hereinafter defined):

Policy No.	Policy Period
650-501B323-3-IND (renumbered 650-186E960-8-IND)	8/6/75 – 8/6/78
CUP-502B322-6-76	2/1/76 – 2/1/77

9. On information and belief, Guarantee issued to the City the following policies (“Guarantee Policies”) of insurance under which the City has sought defense and indemnity coverage for the Underlying Matter:

Policy No.	Policy Period
GA 402149	8/6/78 - 8/6/79
GA 409574	8/6/79 – 8/6/80
GA 412185	8/6/80 – 8/6/81
GGLA 0505108	8/6/81 – 8/6/82

The Underlying Matter

10. On information and belief, in or about December 1969, the City acquired an approximately 275 acre parcel located in Benton County, Washington.

1 11. On information and belief, in or about 1974, the City designated
2 approximately 46 acres of the parcel as a municipal landfill for disposal of solid
3 waste and construction debris (the “Horn Rapids Landfill” or “Site”). In 1976, the
4 City completed construction of the first phase of the Horn Rapids Landfill and
5 began operations.

6 12. On information and belief, in July 1987, the City began monitoring
7 water quality at the Site using monitoring wells.

8 13. On information and belief, in August 1996, to comply with new
9 groundwater monitoring and reporting rules, the City instituted a groundwater
10 monitoring plan that required routine monitoring for volatile organic compounds,
11 including perchloroethylene (“PCE”), trichlorethylene (“TCE”) and vinyl chloride
12 (“VC”).

13 14. On information and belief, any release of PCE, TCE and VC into the
14 groundwater first occurred after the policy periods for the Travelers Policies. In
15 1998, the City first detected the release of PCE, TCE and VC into groundwater.

16 15. On information and belief, on February 18, 2000, the City notified the
17 Benton-Franklin Health District and the Washington Department of Ecology
18 (“Ecology”) that it had confirmed increases in groundwater contamination at the
19 Site that would be addressed through a formal corrective action process under the
20 Washington Model Toxics Control Act (“MTCA”).

1 16. On information and belief, on March 6, 2000, Ecology notified the
2 City that the Horn Rapids Landfill had been added to Ecology's database of known
3 or suspected contaminated sites (Facility/Site No. 308).

4 17. On information and belief, beginning in or around 2002, the City began
5 to voluntarily conduct a MTCA independent cleanup of the groundwater by
6 initiating a remedial investigation and feasibility study.

7 18. On information and belief, on March 22, 2016, Ecology sent a written
8 notice to the City of its preliminary determination that the City was potentially
9 liable for releases of hazardous substances at the Site ("Underlying Matter"),
10 alleging the following:

- 11 a. The City owned and operated the Site at the time of releases of
12 hazardous substances.
- 13 b. Release of hazardous substance occurred at the Site as reported in
14 environmental reports concerning the Site.
- 15 c. PCE and TCE were released from the Site to groundwater above
16 levels set by Chapter 173-200 WAC, Water Quality Standards for
17 Groundwaters of the State of Washington and Ecology maximum
18 containment levels ("MCLs").
- 19 d. That Ecology may conduct itself, or require PLPs to conduct,
20 remedial actions to investigate and clean up the release of
21 hazardous substances of the Site.

1 19. On information and belief, on April 19, 2016, the City notified
2 Ecology that it accepted its status as a potentially liable person (“PLP”) for
3 contamination at the Site.

4 20. On June 8, 2016, the City tendered the Underlying Matter to Travelers
5 and demanded that Travelers provide a defense and indemnity under the Travelers
6 Policies.

7 21. On information and belief, on July 18, 2016, Ecology notified the City
8 of its final determination that the City was a PLP for contamination at the Site.

9 22. In response to the City’s tender of the Underlying Matter, Travelers
10 agreed to participate in the defense of the City under a full and complete reservation
11 of rights.

12 23. From the date of tender of the Underlying Matter until July 9, 2017,
13 Travelers agreed to pay, and did pay, all reasonable and necessary costs incurred by
14 the City in responding to Ecology’s demand that the City conduct remedial actions
15 to investigate and clean up the release of hazardous substances at the Site.

16 24. On information and belief, on July 9, 2017, the City executed Agreed
17 Order DE 13717 with Ecology, under which the City accepted all liability for the
18 costs and expenses associated with performing a remedial investigation and
19 feasibility study (“RI/FS”) for the Site – whether those costs were incurred by the
20 City performing the work or by Ecology performing the work.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

Count One - No Further Defense Coverage

25. Travelers realleges the allegations of paragraphs 1 through 24 as if fully set forth herein.

26. There is an actual controversy between Travelers and the City involving the Travelers obligation to continue providing a defense to the City for the Underlying Matter.

27. Travelers requests a declaratory judgment that the Travelers Policies do not currently have and do not have in the future, any obligation to defend or reimburse defense costs of the City for the Underlying Matter for reasons including (but not limited to) the following:

a. Any obligation of the Travelers Policies to defend the City against the Underlying Matter ceased when the City admitted its liability for all costs and expenses associated with performing an RI/FS for the Site pursuant to Agreed Order DE 13717, which the City executed with Ecology.

b. The Travelers Policies do not apply because no property damage, as defined by the Travelers Policies, occurred or existed during the policy periods of the Travelers Policies.

c. The Travelers Policies do not apply to property damage that was not caused by an "occurrence" as defined by the Travelers Policies.

d. The Travelers Policies do not apply to property damage to property owned, or occupied by or rented to the insured, or that was used by the insured, or was under the care, custody or control of the insured, or which was alienated by the insured.

1 e. The Travelers Policies do not apply to any claim, loss or damage
2 excluded pursuant to the pollution exclusions contained in the Travelers Policies.

3 **Count Two – No Indemnity Coverage**

4 28. Plaintiff realleges the allegations of paragraphs 1 through 27 above as
5 if fully set forth herein.

6 29. There is an actual controversy between Travelers and the City
7 involving the obligations of the parties concerning insurance coverage for the
8 Underlying Matter.

9 30. Travelers requests a declaratory judgment that the Travelers Policies
10 do not currently have and never had any obligation to indemnify the City for the
11 Underlying Matter for reasons including (but not limited to) the following:

12 a. The Travelers Policies do not apply because no property damage, as
13 defined by the Travelers Policies, occurred or existed during the policy periods of
14 the Travelers Policies.

15 b. The Travelers Policies do not apply to property damage that was not
16 caused by an “occurrence” as defined by the Travelers Policies.

17 c. The Travelers Policies do not apply to property damage to property
18 owned, or occupied by or rented to the insured, or that was used by the insured, or
19 was under the care, custody or control of the insured, or which was alienated by the
20 insured.

21 d. The Travelers Policies do not apply to any claim, loss or damage
22 excluded pursuant to the pollution exclusions contained in the Travelers Policies.
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Count Three – Contingent Characterization

31. Plaintiff realleges the allegations of paragraphs 1 through 30 above as if fully set forth herein.

32. Only if, to the extent that, the Court concludes that the Travelers Policies provide coverage for the City's costs to perform an RI/FS for the Site pursuant to Agreed Order DE 13717, which coverage Travelers denies, Travelers seeks a declaration that all such costs are damages because of property damage and payable as indemnity under the Travelers Policies.

SECOND CLAIM FOR RELIEF

(Contribution/Allocation to Other Insurers)

33. Plaintiff realleges the allegations of paragraphs 1 through 32 above as if fully set forth herein.

34. To the extent the Court determines that Travelers has a duty to defend and/or indemnify the City for the Underlying Matter or for other environmental liabilities at the Site, under any of the Travelers Policies, Travelers is entitled to equitable contribution and/or allocation for such defense or indemnity costs against Guarantee and any other liable insurer of the City.

PRAYER FOR RELIEF

WHEREFORE, Travelers prays for judgment as follows:

A. On the First Claim for Relief, that this court determine and declare that:

a. On Count One, Travelers does not currently have, and does not have in the future, any obligation to defend or reimburse defense

1 costs of the City under the Travelers Policies for the Underlying
2 Matter;

3 b. On Count Two, that Travelers does not have any obligation to
4 indemnify the City under the Travelers Policies for the Underlying
5 Matter; and

6 c. On Count Three, only if, and to the extent that, the Court
7 determines that the Travelers Policies provide coverage for RI/FS
8 costs associated with the Underlying Matter, that all such costs
9 incurred the City's execution of Agreed Order DE 13717 are
10 damages because of property damage and payable as indemnity
11 under the Travelers Policies.

12 B. On the Second Claim for Relief, to the extent the Court declares that
13 Travelers must continue to defend and/or that it must indemnify the
14 City for environmental liabilities at the Site under one or more of the
15 Travelers Policies, an order granting such Travelers contribution and
16 allocation of such amounts against defendant Guarantee, and any other
17 liable insurers.

18 C. Awarding Travelers costs and disbursements that are recoverable by
19 law.

20 D. Awarding Travelers such other and further relief as the Court may
21 deem just and appropriate.
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1 DATED this 29th day of November, 2017.

2 **Davis Wright Tremaine LLP**
3 Attorneys for Plaintiff The Travelers
4 Indemnity Company

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